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**LETTER OF TRANSMITTAL**  
**SAS Foundations E2/T1 Project**

**Run Date** 31-Jan-08  
**Time** 3:50 PM

**Dated:** 2/1/08

**To:** **Pedro Sanchez**  
Caltrans - SAS E2/T1 Foundation Project  
333 Burma Road  
Oakland CA 94607  
Phone: 510-286-0538 Fax:

**TRANSMITTAL No:** KFM-TRN-000702

**Rev:** 00

**Co/Job #** 364-4347

**Contract #** 04-0120E4

**Sub/Supplier:**

**Sub/Supplier No:**

**Subject:** NOPC 19-011808 Supplemental NOPC

**Special Provis. (SP) REF:**

**Standard Spec. (SS) REF:**

**RESUBMITTAL/SUPPLEMENTAL REF:**

**We are sending the following attached items:**

☒ Attached

☐ Via Fax

☐ Contract Plans/Specs

☐ Certs of Compl./Samples

☐ Working Drawings

☐ Drawings/Calculations

☐ Schedule

☐ WQCP and/or Addenda

☐ Change Order

☐ Progress Estimate Request

☐ Weekly Welding Reports

☒ Copy of Letter

☐ Payroll Information

☐ CWR Procedure

Item	Date	Copies	Description	Pages
01	31-Jan-2008	1	NOPC - 19-011808 Form CEM 6201B	

**These are transmitted as checked below:**

☐ For Approval

☐ For Review/Comment

☐ Return For Correction

☒ For Your Use

☐ As Requested

☐ For Information

**Remarks:**

**CC:**

**Submitted By:**

**George Atkinson**

(KFM Staff Member - Originator of Transmittal)

**Checked & Sent By:**

Contract Admin/DCS Staff

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION  
**SUPPLEMENTAL NOTICE OF POTENTIAL CLAIM**  
CEM-6201B (NEW 9/2002)

FOR STATE USE ONLY	
Received By	DATE
(For resident engineer)	

TO Pedro Sanchez (resident engineer)	CONTRACT NUMBER 04-0120E4	DATE January 31, 2008	IDENTIFICATION NUMBER 19-011808
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This is a Supplemental Notice of Potential Claim for additional compensation submitted as required under the provisions of Section 9-1.04, "Notice of Potential Claim," of the Standard Specifications. The act of the engineer, or his/her failure to act, or the event, thing, occurrence, or other cause giving rise to the potential claim occurred on: DATE

January 18, 2008

The particular nature and circumstances of this potential claim are described in detail as follows

See attached "NOPC 19-011808 -- Supplemental Notice of Potential Claim".

(attach additional sheets as needed)

The basis of this potential claim including all relevant contract provisions are listed as follows:

See attached "NOPC 19-011808 -- Supplemental Notice of Potential Claim".

(attach additional sheets as needed)

The estimated dollar cost of the potential claim including a description of how the estimate was derived and an itemized breakdown of individual costs are attached hereto.

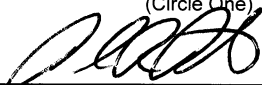
See attached "NOPC 19-011808 -- Supplemental Notice of Potential Claim".

(attach sheets as required)

A time impact analysis of the disputed disruption has been performed and is attached hereto. The affect on the scheduled project completion date is as follows:

See attached "NOPC 19-011808 -- Supplemental Notice of Potential Claim".

*The undersigned originator (Contractor or Subcontractor as appropriate) certifies that the above statements and attached documents are made in full cognizance of the California False Claims Act, Government Code sections 12650-12655. The undersigned further understands and agrees that this potential claim to be further considered, unless resolved, must fully conform to the requirements in Section 9-1.04 of the Standard Specifications and must be restated as a claim in the Contractors written statement of claims in conformance with Section 9-1.07B of the Standard Specifications.*

Kiewit / FCI / Manson A JV  
SUBCONTRACTOR or CONTRACTOR  
(Circle One)  
  
(Authorized Representative)

**For a subcontractor potential claim**

This notice of potential claim is acknowledged, certified and forwarded by

PRIME CONTRACTOR

(Authorized Representative)

## **NOPC 19-011808 – Supplemental Notice of Potential Claim**

### **Nature and Circumstances of Potential Claim**

Kiewit/FCI/Manson AJV (“KFM”) was impacted due to incorporation of Integrated Shop Drawing (“ISD”) resolutions into the contract plans by the State. Contract Change Order (“CCO”) No. 56 has been issued by the State. This CCO revises the early completion incentive payment terms while maintaining the original Contract Completion date of March 31, 2008. This CCO also defers monetary compensation associated with the resultant delay. CCO #56 has been accepted by KFM and returned to the State for approval. Currently, it is not approved by the Engineer and not effective under the Contract.

The State, however, has not yet issued a CCO to compensate KFM for monetary damages resulting from the agreed to 22 day delay associated with the late issuance of revised contract plans

KFM, through its subcontractor, NorCal Structural (“NorCal”), prepared and submitted Integrated Shop Drawings in accordance with Special Provision 5-1.0105 “Integrated Shop Drawings”. The Pier E2 ISD submittal was returned “Approved as Noted” by State Letter 1286, dated May 30, 2006. The Pier T1 ISD submittal was returned “Approved as Noted” by State Letter 1448, dated June 27, 2006.

Conflicts between various design elements were encountered by KFM/NorCal in both Pier E2 and Pier T1. These conflicts were resolved in the preparation of the ISD. Following approval of the ISD submittals, KFM requested that the State furnish revised contract drawings to incorporate the ISD resolutions into the contract.

KFM made a written request for revised Pier E2 contract plans on June 1, 2006, by KFM Letter 166, and again on June 29, 2006, by KFM Letter 171. KFM also requested revised Pier T1 contract plans on June 29, 2006 by KFM Letter 172. In all cases KFM requested the State issue a CCO to incorporate these revised contract plans into the contract. Further, KFM notified the State in Letter 171 of likely delays to the project schedule if revised contract plans were not issued.

The State directed KFM on June 30, 2006, by Letter 1485, to

“proceed with the construction of Pier T1 and Pier E2 per the Project Plans with conflicts resolved in accordance with the approved ISD revisions and all related RFI responses.”

And in addition State Letter 1485 stated:

“Pursuant to Section 4-1.03, “Changes”, of the Standard Specifications, payment for extra work and changes in contract item quantities that may be associated with applying the approved ISD conflict resolutions and RFI responses to the construction of Pier T1 and Pier E2 shall be addressed in Contract Change order No. 41.”

However, the State did not issue revised contract plans illustrating the ISD resolutions in association with Letter #1485 as requested by KFM. Due to impracticalities of proceeding without revised contract plans, KFM undertook, as an alternative, an effort with NorCal to produce “Coordination Drawings” that would detail the three-dimensional ISD CAD model resolutions onto plan sheets. KFM outlined its program to develop these Coordination Drawings in its Letters 175, dated July 21, 2006, and again in Letter 182, dated August 11, 2006.

On August 29, 2006, KFM informed the State that completion of the Coordination Drawings was expected to delay the project completion date by 56 calendar days. The State notified KFM on August 30, 2006, as confirmed by State Letter 1810 dated September 5, 2006, to stop all work on Coordination Drawing preparation. The State further confirmed in Letter 1810 that KFM would be compensated for its Coordination Drawing effort under Contract Change Order No. 41.

Thereafter, the State issued twenty-five revised contract plan sheets on September 13, 2006 by State Letter 1869 and directed KFM to "proceed with the construction of Pier T1 and Pier E2 per the revised contract plans." Furthermore, "payment for extra work and changes in contract item quantities associated with applying these revised contract plans to the construction of Pier T1 and Pier E2 will be addressed in pending Contract Change Order No. 41" pursuant to Standard Specification 4-1.03, "Changes".

The State also noted in its Letter 1869, "by transmitting these revised contract plans to KFM the critical delay in the KFM August 2006 schedule for this issue has been mitigated". KFM agreed with the State that the critical delay had largely been mitigated. Nevertheless, a resulting 22-day delay to T1 had not been avoided. This was discussed in KFM Letter 196, dated September 27, 2006. In compliance with contract Special Provision Section 10-1.09, "Progress Schedule", KFM furnished Time Impact Analysis #2 ("TIA #2") documenting a 22-day delay to Pier T1 construction. This TIA was forwarded to the State in KFM Letter 200 dated September 28, 2006.

KFM proposed a schedule mitigation to maintain the contract completion date of March 31, 2008 and alter the contractor's early completion incentive payment terms. KFM's TIA#2 proposal included the notification that "cost associated with the proposed mitigation measure may include extended labor, equipment and escalation."

The State responded to KFM's TIA #2 proposal on February 26, 2007 by its Letter 2897. The State recognized a 22-day delay to project completion, accepted the proposed schedule mitigation, and directed the contractor to incorporate the 22-day delay and mitigation into the project schedule. Per State Letter 2897 CCO #41 was to be issued to:

- "1. Revise the KFM Early Completion date from December 23, 2007 to January 14, 2008, reducing the Early Completion duration from 100 to 78 calendar days.
2. Maintain the current Contract Completion date of March 31, 2008.
3. Maintain the Early Completion bonus of \$5 million dollars."

KFM notified the State by Letter 246, dated March 8, 2007 that "the three points described in State Letter 2897 dated February 26th do not consider KFM's mitigation proposal in full". KFM's Letter 246 continued "As described in our letter #200, consideration needs to be given to extended labor, equipment and escalation for that 22-day period" and "KFM's risk associated with not meeting the early completion date has increased."

CCO #41 as described in State Letter 2897 was never issued. Instead, CCO #56 was transmitted to KFM on December 21, 2007 for review and acceptance. CCO #56, as transmitted, incorporates the contract modifications acknowledged by the State in its Letter 2897 but does not acknowledge (or preclude recovery of) additional costs, risk premiums, or other damages to KFM as a result of the 22-day schedule impact from ISD-related changes.

CCO #56 has been accepted by KFM and returned to the State for approval. As of this date, it has not yet become effective under the contract. If approved by the Engineer, CCO #56 will relieve KFM's Notice of Potential Claim under Standard Specification 8-1.07 with respect to adjustments to the Contract Completion date and the Early Completion terms under Special Provision Section 4, "Beginning of Work, Time of Completion, and Liquidated Damages,

However, KFM requests the State immediately issue a CCO in accordance with Standard Specification 4-1.03 to compensate KFM for damages resulting from the 22-day schedule impact described in TIA #2 and KFM Letter #246.

### **Contract Basis for Potential Claim**

Imminent completion of all contract work by KFM and Contract Acceptance by the State without an approved CCO for this work gave rise to this NOPC. KFM has performed extra work without an approved change order to accommodate the issuance of revised contract drawings and suffered damages resulting from the associated 22-day delay to contract completion.

CCO #56 as issued and agreed to by KFM addresses some aspects of this NOPC. As drafted, CCO #56 will adjust the early completion incentive payment terms. However, compensation for the effects of the 22-day delay on the project has been deferred and must be considered in another as-yet to be issued CCO.

Amended Standard Specification 9-1.07B, "Final Payment and Claims", fifth paragraph, notes that claims made in response to the Proposed Final Estimate following Contract Acceptance will not be considered if the Contractor did not first comply with applicable notice or protest requirements of the contract including 9-1.04 "Notice of Potential Claim". As CCO #56 was not effective on January 18, 2008, and could not be reasonably anticipated to be approved and effective by KFM's anticipated completion date, KFM made this Notice of Potential Claim to allow for claims associated with this work in accordance with Amended Standard Specification 9-1.07B, "Final Payment and Claims".

KFM has incurred extra work in the form of additional labor, equipment, supervisory, and other expenses directly related to the revised contract plans. KFM undertook an effort to produce Coordination Drawings that would satisfy the needs of project control and administration in the absence of revised contract drawings. The State agreed with the planned scope of work and confirmed it would be paid as extra work. This effort was stopped by the State and replaced with a State-controlled process to issue revised contract drawings. (Compensation for Coordination Drawing effort is to be provided under other CCOs.)

The issuance of revised contract plans on September 13, 2006 resulted in a 22-day delay to project completion. This delay was demonstrated in TIA #2 and was accepted by the State. Preparing the Coordination Drawings and the subsequent delay costs associated with the issuance of revised contract plans could not have been foreseen. In addition, this work is new and was not covered by any of the various items for which there is a bid price or by any combination of those items. Accordingly, damages resulting from this circumstance are compensable in accordance with Standard Specification 4-1.03, "Changes."

In accordance with the Public Contract Code, the State bears the responsibility for the completeness and accuracy of the project plans and specifications. Under Special Provision Section 5-1.0105, "Integrated Shop Drawings" the contract does not provide a mechanism for incorporating any ISD-resolutions into the contract. The contract provides no indication that the parties are to contemplate a delay occurring as a result of incorporation of the ISD-resolutions into the contract. Under these circumstances, any

extra work or delay damages to the Contractor associated with this effort would be unreasonable and compensable.

KFM has requested a Contract Change Order be issued to cover damages stemming from the 22-day delay due to incorporating ISD-resolutions. KFM has justified the delay time period and has suffered damages from the delay. Since no CCO has been issued or approved as of January 18, 2008, and could not be reasonably anticipated to have been approved and effective by KFM's anticipated completion date, KFM has made this Notice of Potential Claim to allow for claims associated with this work in accordance with Amended Standard Specification 9-1.07B, "Final Payment and Claims".

#### **Estimated Cost of Potential Claim**

KFM has completed a preliminary estimate of damages due to delays from incorporation of ISD-resolution related design changes into the contract plans as follows:

Craft Labor	\$35,029
Equipment	\$494,422
Subcontractors	\$225,060
Materials and Other	\$112,109
Supervisory	<u>\$187,200</u>
Total	\$1,053,820

#### **Time Impact Analysis**

Time Impact Analysis #2 was developed by KFM and is the basis for determination of a 22-day delay to completion of the work. TIA #2 has been accepted by the Sate. No additional time analysis is relevant or necessary.